

**SERVICE AGREEMENT BETWEEN THE CITY OF SUNNYVALE
AND GREGORY B. BRAGG & ASSOCIATES, INC.,
FOR THIRD PARTY WORKERS' COMPENSATION CLAIMS
ADMINISTRATION SERVICES**

THIS AGREEMENT dated January 13, 2004 is by and between the CITY OF SUNNYVALE, a municipal corporation ("CITY"), and GREGORY B. BRAGG & ASSOCIATES, INC., a California corporation ("ADMINISTRATOR").

WHEREAS, CITY is in need of specialized services in relation to the administration of CITY's Workers' Compensation claims; and

WHEREAS, ADMINISTRATOR possesses the skill and expertise to provide the required services;

NOW, THEREFORE, THE PARTIES ENTER INTO THIS AGREEMENT.

1. Services by ADMINISTRATOR

ADMINISTRATOR shall provide services in accordance with Exhibit "A" attached and incorporated by reference. ADMINISTRATOR shall determine the method, details and means of performing the services.

2. Time for Performance

The term of this Agreement shall be January 1, 2004, to June 30, 2005, unless otherwise terminated. ADMINISTRATOR shall deliver the agreed upon services to CITY as specified in Exhibit "A". ~~Agreement term may be extended for three additional one-year periods at the option of CITY.~~

3. Duties of CITY

CITY shall supply any documents or information available to City required by ADMINISTRATOR for performance of its duties. All documents, materials, reports, claims and other written, photographed or electronic records provided to ADMINISTRATOR by CITY, or which are produced by ADMINISTRATOR, in connection with the duties under this Agreement, shall be maintained in confidence by ADMINISTRATOR except when disclosure is authorized by CITY or is necessary to perform the obligations of ADMINISTRATOR under this Agreement. Any materials provided shall be returned to CITY upon completion of the work.

4. Compensation

CITY agrees to pay ADMINISTRATOR at the rates set forth in Exhibit "B" attached and incorporated by reference. Total compensation shall not exceed Three Hundred Sixty Seven Thousand Five Hundred and no/100 Dollars (\$367,500.00) during the initial eighteen-month period. Should CITY exercise its option to extend the Agreement, total compensation during any one-year period shall not exceed Two Hundred Forty Five Thousand and no/100 Dollars (\$245,000.00). ADMINISTRATOR shall submit invoices to CITY to be paid in accord with the procedures set forth in Exhibit "B".

5. Ownership of Documents

CITY shall have full and complete access to ADMINISTRATOR's working papers, drawings and other documents during progress of the work. All documents of any description prepared by ADMINISTRATOR shall become the property of the CITY at the completion of the project and upon payment in full to the ADMINISTRATOR. ADMINISTRATOR may retain a copy of all materials produced pursuant to this Agreement.

6. Conflict of Interest

No officer or employee of CITY shall have any interest, direct or indirect, in this Agreement or in the proceeds thereof. During the term of this Agreement, ADMINISTRATOR shall not accept employment or an obligation, which is inconsistent or incompatible with ADMINISTRATOR's obligations under this Agreement.

7. Confidential Information

ADMINISTRATOR shall maintain in confidence and at no time use, except to the extent required to perform its obligations hereunder, any and all proprietary or confidential information of CITY of which ADMINISTRATOR may become aware in the performance of its services.

8. Compliance with Laws

(a) ADMINISTRATOR shall strictly adhere to all state and federal laws with respect to discrimination in employment and shall not discriminate against any individual on the basis of race, color, religion, gender, sexual orientation, marital status, national origin, age or disability.

(b) ADMINISTRATOR shall comply with all federal, state and city laws, statutes, ordinances, rules and regulations and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of the Agreement, including, but not limited to, the Worker's Compensation laws of the State of California. Such obligations shall include not only an obligation to comply with California Workers' Compensation laws with respect to its employees, but also an obligation to administer CITY's Workers' Compensation claims in accordance with said laws.

9. Independent Contractor

ADMINISTRATOR is acting as an independent contractor in furnishing the services or materials and performing the work required by this Agreement and is not an agent, servant or employee of CITY. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between CITY and ADMINISTRATOR. ADMINISTRATOR is responsible for paying all required state and federal taxes.

10. Indemnity

ADMINISTRATOR shall indemnify, defend and hold harmless CITY and its officers, officials, employees and volunteers from and against any and all liability, loss, damage, expense, costs (including without limitation costs and fees of litigation) of every nature arising out of or in connection with ADMINISTRATOR's performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage which was caused by the sole negligence or willful misconduct of CITY.

11. Insurance

ADMINISTRATOR shall take out and maintain during the life of this Agreement policies of insurance as specified in Exhibit "C" attached and incorporated by reference, and shall provide all certificates and endorsements as specified in Exhibit "C."

12. CITY Representative

Barbara Coats, CITY's Risk and Insurance Manager, as the City Manager's authorized representative, shall represent CITY in all matters pertaining to the services to be rendered under this Agreement. All requirements of CITY pertaining to the services and materials to be rendered under this Agreement shall be coordinated through the CITY representative.

13. ADMINISTRATOR Representative

Randall Smith, President, shall represent ADMINISTRATOR in all matters pertaining to the services and materials to be rendered under this Agreement; all requirements of ADMINISTRATOR pertaining to the services or materials to be rendered under this Agreement shall be coordinated through the ADMINISTRATOR representative.

14. Notices

All notices required by this Agreement shall be in writing, and shall be personally delivered, sent by first class with postage prepaid, or by sent by commercial courier, addressed as follows:

To CITY:	Risk and Insurance Manager
	CITY OF SUNNYVALE
	P. O. Box 3707
	Sunnyvale, CA 94088-3707

To ADMINISTRATOR: Randall Smith, CPA, ARM
 GREGORY B. BRAGG & ASSOCIATES, INC.
 PO Box 2216
 Granite Bay, CA 95746-2216

Nothing in this provision shall be construed to prohibit communication by more expedient means, such as by telephone or facsimile transmission, to accomplish timely communication. However, to constitute effective notice, written confirmation of a telephone conversation or an original of a facsimile transmission must be sent by first class mail or commercial carrier, or hand delivered. Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of two days after mailing, unless such date is a date on which there is no mail service. In that event communication is deemed to occur on the next mail service day.

15. Assignment

Neither party shall assign or sublet any portion of this Agreement without the prior written consent of the other party.

16. Termination

If ADMINISTRATOR defaults in the performance of this Agreement, or materially breaches any of its provisions, CITY at its option may terminate this Agreement by giving written notice to ADMINISTRATOR. If CITY fails to pay ADMINISTRATOR, ADMINISTRATOR at its option may terminate this Agreement if the failure is not remedied by CITY within thirty (30) days from the date payment is due.

Without limitation to such rights or remedies as CITY shall otherwise have by law, CITY also shall have the right to terminate this Agreement for any reason upon ten (10) days' written notice to ADMINISTRATOR. In the event of such termination, ADMINISTRATOR shall be compensated in proportion to the percentage of services performed or materials furnished (in relation to the total which would have been performed or furnished) through the date of receipt of notification from CITY to terminate. ADMINISTRATOR shall present CITY with any work product completed at that point in time.

17. Entire Agreement; Amendment

This writing constitutes the entire agreement between the parties relating to the services to be performed or materials to be furnished hereunder. No modification of this Agreement shall be effective unless and until such modification is evidenced by writing signed by all parties.

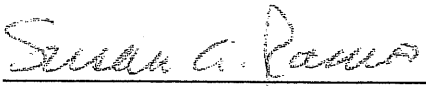
18. Miscellaneous

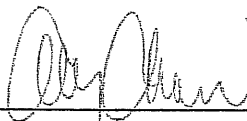
Time shall be of the essence in this Agreement. Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision. This Agreement shall be governed and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement.

ATTEST:

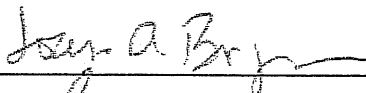
CITY OF SUNNYVALE ("CITY")

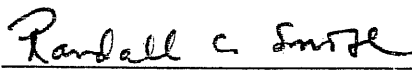
By 
City Clerk

By 
City Manager

APPROVED AS TO FORM:

GREGORY B. BRAGG & ASSOC., INC.
("ADMINISTRATOR")

By 
City Attorney

By 
PRESIDENT
Name and Title

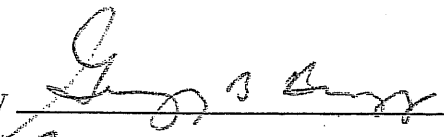
By 
GREGORY B. BRAGG, CEO
Name and Title

EXHIBIT "A"
SCOPE OF SERVICES

1. Claims Management Services

ADMINISTRATOR shall:

- a. Make initial contact with claimant and establish a numbered claim file within 24 hours of receipt of the Employers' First Report of Injury from CITY. (CITY prefers to transfer this form electronically.) These files shall be available for review by CITY at anytime during ADMINISTRATOR's regular business hours, preferably electronically through a remote access terminal with viewing capability.
- b. Administer the provision of entitlements of workers' compensation benefits under State Labor Code in a timely and accurate manner. Any and all penalties incurred as a result of the failure of ADMINISTRATOR to comply with statutory laws and/or administrative regulations shall be the sole responsibility of ADMINISTRATOR. The only exception will be those requests made to ADMINISTRATOR in writing by CITY for specific action on a file.
- c. Discuss any unusual claims promptly with Risk and Insurance Division staff and make any necessary contact with the injured employee and his or her manager or supervisor if additional information regarding the claim is required. (CITY is placing increased responsibility on the role of the manager and supervisor in each department in occupational injuries.)
- d. Maintain accurate and timely loss runs and occupational injury data, using a format and system acceptable to CITY, and establish adequate reserves and post indemnity, 4850, 5850, medical, vocational rehabilitation benefits and loss adjustment expenses. Each of these records shall be individually itemized on any loss information reports.
- e. Reduce all medical bills, other than medical legal expenses, to the Relative Value Schedule (RVS) and recommended rates set by the Administrative Director, Division of Workers' Compensation. CITY will make any selection of the vendor used.
- f. Upon request, provide input to CITY which CITY may use to select defense and subrogation counsel. CITY currently uses the services of several local workers' compensation law firms.
- g. Proceed against all responsible persons and/or agencies in subrogation actions in an effort to recover losses suffered by CITY due to injuries or illnesses inflicted on its employees and volunteers. Such actions can be referred to specific legal counsel or alternative claims agency, if agreed to by CITY.

- h. Investigate all questionable claims with the coordination and assistance of Risk and Insurance Division staff. Provide advance notice and explanation to the Risk and Insurance Division of any claim which may be denied by the claims examiner. Denial and acceptance of claims decisions is a joint process under the law involving ADMINISTRATOR and CITY.

2. Closing of Claims

ADMINISTRATOR shall process and close claims expeditiously, such that CITY's claim examiner does not have a caseload of open indemnity files at any one time that exceeds 150 files.

All closed files shall remain the property of CITY and shall not be disposed of without CITY's prior authorization. CITY shall have the option of relocate such files from ADMINISTRATOR's storage location to CITY. CITY will not pay costs or fees associated with the transfer of closed files to CITY or its agent.

ADMINISTRATOR shall:

- a. Close claims for which all medical and indemnity payments within ninety days of the last benefit payment, whenever possible.
- b. Maintain closed files pursuant to State Labor Code provisions.
- c. Meet on a regular or quarterly basis with CITY staff to discuss closing of claims.

3. Additional Services

- a. Upon request by CITY, ADMINISTRATOR's claims examiner shall attend selected Workers' Compensation Appeals Board hearings, status conferences and trials along with depositions, conferences with legal defense counsel, and meetings with CITY staff, departments and employee groups.
- b. Prompt and responsive written, oral and in person communication by the claims examiner with CITY staff is required. Communications with CITY employees is of particular concern to CITY. ADMINISTRATOR may communicate with CITY employees via e-mail but copies of messages to employees shall be sent to CITY's Risk and Insurance Division.
- c. At ADMINISTRATOR's expense, ADMINISTRATOR shall provide all forms, posters, and pamphlets required by the State Labor Code and the Administrative Director for the processing of claims and benefits information. ADMINISTRATOR shall prepare and file the Public Entities Self-Insured Annual Report.
- d. ADMINISTRATOR shall report immediately to CITY's excess insurance carrier any claim that meets immediate reporting criteria as established by the excess insurance carrier, with a copy to CITY. ADMINISTRATOR shall provide all requested information to CITY's excess insurer and submit requests for reimbursements on behalf of CITY.

- e. ADMINISTRATOR will fully cooperate with, provide requested information to, and respond to recommendations and findings of CITY and the excess carrier audit and actuary consultants.
- f. ADMINISTRATOR shall complete and provide to CITY all required Cal/OSHA logs and Summary of Occupational Injuries and Illness reports. ADMINISTRATOR shall meet with and liaise with CITY Loss Control and Occupational Health and Safety Analyst to identify potential loss problems or trends. Automated reporting in this area is important to CITY.
- g. ADMINISTRATOR shall comply with CITY's Best Practices Plan, where applicable, and shall make recommendations to CITY for plan improvements and enhancements on an ongoing basis.

4. Medical Cost Control

- a. ADMINISTRATOR shall provide details of medical service cost savings resulting from ADMINISTRATOR-maintained Preferred Provider Network, if applicable, on a quarterly basis. ADMINISTRATOR shall provide details of medical facility cost savings resulting from any ADMINISTRATOR-maintained Preferred Provider Network. ADMINISTRATOR shall also provide details of cost savings resulting from ADMINISTRATOR operated/contracted bill review activities.
- b. Medical control on litigated claims shall remain with ADMINISTRATOR but with full communication to CITY. Mutual agreements with CITY will have to be made on the use of any Agreed Medical Examiners (AME) on individual or case- by-case basis.

5. Litigation

- a. ADMINISTRATOR shall closely monitor litigation efforts and make regular reports to CITY. CITY's Risk and Insurance Manager shall authorize, in advance, any and all depositions, investigative and subroa activities.
- b. CITY's Risk and Insurance Manager or the Director of the Department of Human Resources shall approve any settlement of a litigated claim at least fourteen days in advance of its being presented or negotiated with claimant's attorney.
- c. Prior to any settlement conference, ADMINISTRATOR and/or defense counsel, whichever is appropriate, shall provide a written analysis of the case, including options and recommendations for settlement. All permanent disability rating shall be defined in dollars and degree of disability. ADMINISTRATOR shall inform CITY of all settlement offers received from the claimant or claimant's attorney. Sunnyvale City Council approval is required for all settlements over \$50,000.

- d. ADMINISTRATOR shall inform CITY within twenty-four hours of receipt of any hearing, conference, or trial dates set by the Workers' Compensation Appeals Board. When an application for adjudication has been filed, an effort will be made by ADMINISTRATOR to settle the claim without assigning it to defense counsel.
- e. ADMINISTRATOR shall establish controls and procedures to manage and contain the cost of defense.

6. Financial Matters/Accounting

- a. A trust fund or account in the name of CITY and/or ADMINISTRATOR will be maintained for the purpose of paying benefits and entitlements that may be due on claims presented.

ADMINISTRATOR shall draw from that account or fund to make payments due on accounts payable and to make benefit payments; or a payment request process may be used to initiate payment, as appropriate, by CITY. Additionally, ADMINISTRATOR may be asked to open an account at a Union Bank as designated by CITY and maintain a zero balance account which will be funded by a wire transfer, as needed.

ADMINISTRATOR shall meet with CITY's Accounting Officer, or her designee, and CITY's Risk and Insurance Manager to determine all processes and procedures relative to this account. All agreed-upon processes and procedures shall be confirmed in writing.

- b. ADMINISTRATOR shall provide to CITY's Risk and Insurance Manager a monthly check/voucher payment register of all transactions made for the period and a copy of all check vouchers or warrants drawn by ADMINISTRATOR to pay benefits and entitlements. CITY reserves the right to conduct an annual financial audit of the trust account to ensure the integrity of the account.

7. Data Processing/Loss Reporting

- a. ADMINISTRATOR shall convert and/or establish loss run data base and transfer files from previous ADMINISTRATOR
- b. ADMINISTRATOR shall provide a computer-generated loss run analysis/summary report for each month throughout the contract term covering activity on all newly reported, open and newly closed claims for the period. This report shall be customized to meet CITY needs and shall, at a minimum, provide the following information by claim year:
 - c. All records, files, transcripts, and computer tapes, including loss run data base files and other materials related to the management and administration of CITY's workers' compensation claims, are the property of CITY and shall be relinquished in good order and condition upon termination of the contract with ADMINISTRATOR.

EXHIBIT "B"

COMPENSATION

FEES

ADMINISTRATOR shall be compensated at the following rates for claims management services as described in Exhibit "A":

Initial Term of Contract

January 1, 2004, through June 30, 2005	An amount not to exceed \$367,500.00
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Extensions, if any

July 1, 2005, through June 30, 2006	An amount not to exceed \$245,000.00
July 1, 2006, through June 30, 2007	An amount not to exceed \$245,000.00
July 1, 2007, through June 30, 2008	An amount not to exceed \$245,000.00

CITY reserves the right to convert the method of compensation under this Agreement to a sliding scale, based upon the number of open indemnity claims as presented in ADMINISTRATOR's written proposal in response to Request for Proposals No. F0308-09 (Cost of Services - Option 3).

In addition, CITY shall pay ADMINISTRATOR an annual claims administration fee of \$5,000 which shall represent compensation for the following services: computer input of all open claims, orientation and onsite department training, monthly computer loss information and special quarterly and annual reports, trust account (excluding check and bank charges), and online access to claim information for three users.

INVOICING AND PAYMENT

Invoices shall be submitted no more frequently than monthly. Invoiced amounts shall be an appropriate prorated portion of the total annual fee. Payment shall be made within thirty (30) days of receipt of an accurate, itemized invoice by CITY's Accounts Payable Unit.

EXHIBIT "C"
INSURANCE REQUIREMENTS

ADMINISTRATOR shall obtain, at its own expense and from an admitted insurer authorized to operate in California, the insurance coverage detailed below and shall submit Certificate(s) of Insurance to the City of Sunnyvale, Purchasing Division, 650 West Olive Ave, PO Box 3707, Sunnyvale, CA 94088-3707; fax (408) 730-7710.

ADMINISTRATOR shall take out and maintain during the life of the contract **Workers' Compensation and Employer's Liability Insurance** for its employees. The amount of insurance shall not be less than \$1,000,000 per accident for bodily injury or disease.

ADMINISTRATOR shall take out and maintain during the life of the contract such **Commercial General Liability Insurance** as shall protect ADMINISTRATOR, CITY, its officials, officers, directors, employees and agents from claims which may arise from services performed under the contract, whether such services are performed by ADMINISTRATOR, by CITY, its officials, officers, directors, employees or agents or by anyone directly or indirectly employed by either. The amount of insurance shall not be less than the following: Single Limit Coverage Applying to Bodily and Personal Injury Liability and Property Damage: \$1,000,000.

The liability insurance shall include, but shall not be limited to:

- Protection against claims arising from bodily and personal injury and damage to property, resulting from ADMINISTRATOR's or CITY's operations and use of owned or non-owned vehicles.
- Coverage on an "occurrence" basis.
- Broad form property damage liability. Deductible shall not exceed \$5000 without prior written approval of CITY.
- Notice of cancellation to CITY's Purchasing Division at least thirty (30) days prior to the cancellation effective date.

The following endorsements shall be attached to the liability insurance policy, and copies shall be submitted with the Certificate(s) of Insurance:

- The policy must cover complete contractual liability. Exclusions of contractual liability as to bodily injuries, personal injuries and property damage must be eliminated.
- CITY must be named as additional named insured with respect to the services being performed under the contract. *Simply indicating on the certificate that the certificate holder is named as additional insured is not acceptable; an endorsement must be provided.*
- The coverage shall be primary insurance so that no other insurance effected by CITY will be called upon to contribute to a loss under this coverage.